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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/781,627	02/20/2004	Volker Braun	Q79775	4136

23373 7590 12/01/2006

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EXAMINER
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PEACHES, RANDY

ART UNIT	PAPER NUMBER
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2617

DATE MAILED: 12/01/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/781,627

Applicant(s)

BRAUN ET AL.

Examiner

Randy Peaches

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 17 November 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-4 and 6-10 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4 and 6-10 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### DETAILED ACTION

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 11/17/2006 has been entered.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

1. ***Claims 1-10*** are rejected under 35 U.S.C. 102(e) as being anticipated by Hamabe et al. (European Publication Number EP 1 237 296 A2), hereinafter Hamabe et al.

Regarding ***claims 1 and 8-10***, Hamabe et al. discloses a method of transmitting data over a dedicated physical channel (DPCH) and a High Speed Packet Data Shared Channel (HS-PDSCH), which reads on claimed "first and second channels," the said

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DPCH having a constant (QoS), which includes data rate, which reads on claimed "predefined grade of service,"(see column 2 lines 10-16) and a said HS-PDSCH having a variable grade of service (see column 2 lines 31-36), the method comprising:

- determining a maximum load of a transmit power amplifier. See column 4 lines 3-8 and FIGURE 3;
- determining a share of the load, which is due to the transmission over the said HS-PDSCH. See column 4 lines 3-17,
- determining a share of the load, which is due to the transmission over the first channels by subtracting the share of the load, which is due to the transmission over the HS-PDSCH from the said maximum load of the PDSCH. See column 4 lines 4-17 and column 7 lines 15-23;
- determining a difference between a maximum load and the share, which is due to the transmission of the DPCH. See column 4 lines 9-17;
- controlling the transmission over the second channels on the basis of the difference. See column 4 lines 9-17.

Regarding **claim 2**, according to **claim 1**, Hamabe et al. further discloses wherein the said DPCH are dedicated channels and the said HS-PDSCH are shared channels. See column 3 lines 52-58.

Regarding **claim 3**, according to **claim 1**, Hamabe et al. further discloses whereby the load is determined by means of a moving average of the load being required to transmit

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the data over the first and second channels by means of the transmit power amplifier.

See column 6 lines 55-58 and column 7 lines 1-14.

Regarding **claim 4**, according to **claim 1**, Hamabe et al. further discloses wherein the maximum load being a mean power amplitude (see FIGURE 3), whereby the mean power amplitude is a safety margin below maximum peak power amplitude. See FIGURE 3.

Regarding **claim 6**, according to **claim 1**, Hamabe et al. further discloses wherein the control is performed by a controller (14) for the said HS-PDSCH. See column 4 lines 45-58, column 7 lines 54-58 and column 8 lines 1-15.

Regarding **claim 7**, according to **claim 1**, Hamabe et al. further discloses wherein the transmission of data over the said DPCH being scheduled by a scheduler for the said DPCH independently from the scheduler for the said HS-PDSCH. See column 8 lines 1-15.

### ***Response to Arguments***

Applicant's arguments with respect to claim 1-4 and 6-10 have been considered but are moot in view of the new ground(s) of rejection.

**Conclusion**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Randy Peaches whose telephone number is (571) 272-7914. The examiner can normally be reached on Monday - Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph H. Feild can be reached on (571) 272-4090. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Randy Peaches  
November 27, 2006

  
**JOSEPH FEILD**  
**SUPERVISORY PATENT EXAMINER**